

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SANDRA L. GAHLEY and U.S. POSTAL SERVICE,  
POST OFFICE, Annapolis, MD

*Docket No. 02-1138; Submitted on the Record;  
Issued May 7, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether appellant met her burden to establish that she sustained a recurrence of disability on or around August 16, 2001, causally related to her June 8, 1999 employment injury.

On June 9, 1999 appellant, then a 52-year-old letter carrier, filed a claim for employment-related cervical and lumbar injuries she sustained on June 8, 1999 when she was involved in an employment-related motor vehicle accident. Appellant stopped work on June 8, 1999. The Office of Workers' Compensation Programs accepted appellant's claim on June 29, 1999 for cervical and lumbar strains. On August 13, 1999 Dr. Stephen D. Brown, appellant's treating Board-certified orthopedic surgeon, released appellant to return to light-duty work. On September 30, 1999 he released her to full duty and she returned to full-duty work on October 4, 1999.

On August 16, 2001 appellant stopped work and on September 17, 2001 she underwent an anterior discectomy and fusion at C5-6 and C6-7. On August 29, 2001 appellant filed a claim for wage-loss compensation, Form CA-7, for the period August 17 through September 21, 2001. Appellant subsequently filed additional claims for wage-loss compensation for the periods September 22, 2001 through January 11, 2002. Appellant was released to light duty on January 3, 2002 and was released to full duty on January 25, 2002.

By letter dated October 23, 2001, the Office requested that appellant provide additional factual and medical information, including all relevant medical reports from June 8, 1999 onward and a rationalized narrative medical report from her attending physician addressing the cause of her condition and its relationship to her original injury.

In support of her claim, appellant submitted an October 18, 2001 attending physician's report, Form CA-20, from Dr. Roy E. Bands, Jr., her treating Board-certified orthopedic surgeon. In his report, which was received by the Office on December 31, 2001, Dr. Bands noted appellant's history of having been in a motor vehicle accident on June 8, 1999 and diagnosed

cervical spondylosis and a herniated disc at C5-6 with foraminal stenosis, as shown on magnetic resonance imaging (MRI) scan. He indicated by check mark that appellant had no history of concurrent or preexisting injury or disease and further indicated by check mark and annotation that the diagnosed conditions were causally related to her June 8, 1999 accident. Dr. Bands stated that he performed anterior cervical discectomy and fusion of C5-6 and C6-7 on September 17, 2001, from which appellant was recovering. Dr. Bands indicated that appellant was totally disabled for the period August 6 through December 17, 2001 and added that he would determine her return to work date on follow-up visits.

In a decision dated January 3, 2002, the Office denied appellant's claim on the grounds that appellant had failed to submit sufficient factual or medical evidence in support of her claim for a recurrence of disability for the period August 17 to October 5, 2001.

By letter dated January 22, 2002, appellant, through her authorized congressional representative, submitted a narrative statement supporting her claim, as well as additional form reports from Dr. Bands dated November 29 and December 3, 2001. Appellant, through her representative, requested that the Office's prior decision be vacated and that her newly submitted evidence be considered.

By letter decision dated January 30, 2002, the Office responded to appellant's congressional representative and stated that the Office had received and reviewed the additional medical evidence from Dr. Bands and found it insufficient to establish appellant's claim. The Office stated that, if appellant disagreed with the January 3, 2002 decision of the Office, she should follow the appeal rights as set forth therein.<sup>1</sup>

By letter dated February 14, 2002, appellant, through her authorized congressional representative, submitted numerous additional medical reports from Dr. Bands dating from August 23, 2001 through January 2, 2002 and again requested that the Office's prior decision be vacated and that her newly submitted evidence be considered.

By letter dated February 26, 2002, the Office responded to appellant's authorized congressional representative and stated that the medical evidence was found to be insufficient. The Office's letter, however, did not include or reference appellant's appeal rights.<sup>2</sup> By letter dated May 23, 2002, the Office again contacted appellant's authorized congressional representative and explained why the medical evidence was found to be insufficient. The Office

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<sup>1</sup> The Board considers the Office's January 30, 2002 letter to be an appealable decision, over which the Board has jurisdiction, as the letter made reference to the appeal rights that accompanied a prior decision and also apprised appellant of an adverse action, *i.e.*, that her medical evidence had been found insufficient to establish her claim. *Julius Cormier*, 47 ECAB 465 (1996).

<sup>2</sup> The Board notes that, while the Office responded, by letter dated February 26, 2002, to appellant's February 14, 2002 request for reconsideration, this letter appears to be simply informational and does not constitute a decision over which the Board has jurisdiction. While the Office's letter does discuss the probative value of the medical evidence of record, it does not include any reference to any appeal rights appellant may have, but rather directs the reader to contact the district Office staff for further information. Office regulations provide that a final decision shall contain findings of fact and a statement of reasons for the decision being made, a copy of which, together with information as to the claimant's appeal rights, shall be mailed to the claimant. *William A. Giovanoni*, 39 ECAB 230 (1987).

stated that, if appellant disagreed with the prior decision of the Office, she should follow the appeal rights as set forth therein.<sup>3</sup>

In a decision dated February 21, 2002, the Office denied appellant's claim for wage-loss compensation for the periods November 17 through 30, 2001 and December 29, 2001 through January 11, 2002. The Office stated that appellant's claim had been disallowed for the reasons set forth in the enclosed copy of the compensation order; however, the only compensation order attached was the Office's prior decision dated January 3, 2002.

The Board finds that appellant failed to meet her burden to establish that she sustained a recurrence of disability for the periods August 17 to October 5, 2001, causally related to her June 8, 1999 employment injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.<sup>4</sup>

In this case, appellant submitted attending physician's form reports from Dr. Bands, her treating Board-certified orthopedic surgeon, dated October 18, November 29 and December 3, 2001. In these reports, Dr. Bands noted appellant's history of having been in a motor vehicle accident on June 8, 1999 diagnosed cervical spondylosis and a herniated disc at C5-6 with foraminal stenosis, as shown on MRI scan and indicated by check mark and supporting annotation that the diagnosed conditions were causally related to her June 8, 1999 accident. Dr. Bands further stated that he performed anterior cervical discectomy and fusion of C5-6 and C6-7 on September 17, 2001, from which appellant was recovering and indicated that appellant was totally disabled for the period August 6 through December 17, 2001.<sup>5</sup>

Although Dr. Bands indicated by check mark and brief annotation that there is a causal relationship between appellant's diagnosed conditions and her accepted employment injury, he failed to provide any medical rationale in his reports explaining how or why there was a causal relationship. The medical evidence required to establish a causal relationship, generally, is

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<sup>3</sup> Although the Board considers the Office's May 23, 2002 letter to be an appealable decision, *see Julius Cormier, supra* note 1; the Board notes that it does not currently have jurisdiction over the decision as it was issued after appellant's appeal to the Board. The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. *Algimantas Bumelis*, 48 ECAB 679 (1997). Similarly, the Board cannot consider the evidence submitted in support of appellant's February 14, 2002 request for reconsideration, which was considered by the Office in its May 23, 2002 decision letter, as the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. *Clara T. Norga*, 46 ECAB 473 (1995).

<sup>4</sup> *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>5</sup> In his report dated November 29, 2001, Dr. Bands released appellant to return to light duty on January 3, 2002 and full duty on January 25, 2002.

rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup> The Board has held that a medical report, on which a physician checks a box on a form report "yes," with regard to whether a condition is employment related, is of diminished probative value without further detail and explanation.<sup>7</sup>

As Dr. Band's reports do not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that her disability for the period August 17 to October 5, 2001 was causally related to her accepted employment injuries, his reports are insufficient to establish that appellant sustained a recurrence of disability as alleged.

With respect to the Office's February 21, 2002 decision denying wage-loss compensation for the periods November 17 through 30, 2001 and December 29, 2001 through January 11, 2002, the Board finds that this decision is incomplete. Office regulations provide that a final decision shall contain findings of fact and a statement of reasons for the decision being made, a copy of which, together with information as to the claimant's appeal rights, shall be mailed to the claimant. The disallowance or formal denial of a claim for benefits is by a compensation order or letter of denial, which must include findings of fact and provide the reasons for the denial in sufficient detail so that a claimant will understand the reasoning behind the rejection of the claim.<sup>8</sup> While the February 21, 2002 decision stated that appellant's claim had been disallowed for the reasons set forth in the enclosed copy of the compensation order, the only compensation order attached was the Office's prior decision dated January 3, 2002. As the periods of disability covered by the February 21, 2002 decision differ from those covered by the January 3, 2002 decision and as appellant submitted additional medical evidence relevant to the periods of disability in question, mere reference to the Office's prior decision does not provide the Board with sufficient information to render an informed adjudication of the case.

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<sup>6</sup> *Joe L. Wilkerson*, 47 ECAB 604 (1996).

<sup>7</sup> *Alberta S. Williamson*, 47 ECAB 569 (1996); *Lester Covington*, 47 ECAB 539 (1996).

<sup>8</sup> *William A. Giovanoni*, *supra* note 2.

The February 21, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further action consistent with this opinion. The Office's January 30 and 3, 2002 decisions are affirmed.

Dated, Washington, DC  
May 7, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member